

BISCEGLIE & DEMARCO, LLC

365 Rifle Camp Road

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Attorneys for Defendant, Building, Concrete, Excavating &
Common Laborers Union Local No. 731, of Greater New York

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

KIEWIT CONSTRUCTORS, INC.,

Plaintiff,

v.

BUILDING, CONCRETE,
EXCAVATING & COMMON
LABORERS UNION LOCAL NO. 731,
OF GREATER NEW YORK,

Defendant.

Case No. 08-CV-3946 (LAP)

**NOTICE OF CROSS-MOTION TO
COMPEL ARBITRATION**

To: Mark A. Rosen, Esq.
McElroy, Deutsch, Mulvaney, & Carpenter, LLC
Wall Street Plaza
88 Pine Street, 24th Floor
New York, New York 10005

PLEASE TAKE NOTICE that defendant Building, Concrete, Excavating & Common Laborers Union Local No. 731, of Greater New York ("Local 731"), will move before this Court at the U.S. Daniel P. Moynihan U.S. Courthouse, 500 Pearl Street, New York, New York 10007, on the 18th day of June, 2008, at 9:00 a.m., or as soon thereafter as counsel may be heard, for an Order compelling arbitration.

In support of its cross-motion to compel arbitration, defendant Local 731 will rely on the Affidavit of Mark I. Silberblatt, Esq, including Exhibits 1 through 9, attached thereto, and

Defendant's Memorandum of Law, all of which are also submitted in opposition to Plaintiff's Complaint and application for an order to staying and vacating Arbitration.

PLEASE TAKE FURTHER NOTICE that Local 731 requests oral argument.

PLEASE TAKE FURTHER NOTICE that a Proposed Form of Order and Judgment is submitted herewith.

Respectfully submitted,

BISCEGLIE & DEMARCO, LLC
Attorneys for Defendant

Dated: May 27, 2008

/s Angelo R. Bisceglie, Jr.
By: _____
Angelo R. Bisceglie, Jr. (ARB-9251)

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ORDER AND JUDGMENT

This matter having been opened to the Court by McElroy, Deutsch, Mulvaney, & Carpenter, LLC, attorneys for plaintiff, Kiewit Constructors, Inc., having filed a Complaint and Brief in Support of the Application by Plaintiff, Kiewit Constructors, Inc., for an Order to Show Cause Staying and Vacating Arbitration ("Plaintiff's Complaint and Application"); and defendant, Building, Concrete, Excavating & Common Laborers Union Local No. 731, of Greater New York, having filed a Cross-Motion to Compel Arbitration; and the Court having reviewed the papers submitted in support of Plaintiff's Complaint and Application and Defendant's Cross-Motion and for good cause shown;

IT IS on this _____ day of _____, 2008;

ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint and application be and the same is hereby **DENIED** in its entirety; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant's Cross-Motion be and the same is hereby **GRANTED** in its entirety; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint is dismissed with prejudice; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this Order and Judgment shall be served upon counsel for all parties within seven (7) days of the date hereof.

Hon. Loretta A. Preska, U.S.D.J.